

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

DECEMBER 14, 2004

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, December 14, 2004 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:30 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Pauline Ikawa, Nancy LeRoy, Barbara Heath, Executive Director Beth Emmons, Investigator Ann Flanagan, and Education Assistant Fran West.

- I. Motion by Commissioner Heath, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on November 16, 2004.

II. APPOINTMENTS

8:30 a.m. - Equivalency Interviews

The following candidates were interviewed by the Commission present and voting:

CANDIDATE

DETERMINATION

GLEN SMITH

DENIED

On motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission denied Mr. Smith's experience presented as equivalent experience, pursuant to RSA 331-A:10, II (c)(3).

BOB WALKER

DENIED

On motion by Commissioner Heath, seconded by Commissioner Ikawa, the Commission denied Mr. Walker's experience presented as equivalent experience, pursuant to RSA 331-A:10, II (c)(3).

8:50 a.m. MYLES BRATTER appeared before the Commission regarding a previous legal incident prior to applying for an original salesperson's license. After review and discussion, and on motion by Commissioner Heath, seconded by Commissioner LeRoy, the Commission decided to allow Mr. Bratter to apply for his original salesperson's license, based on the fact that Mr. Bratter has not had any further legal incidences and he discloses all previous legal incidences to his employing broker.

9:05 a.m. TIMOTHY POTTER appeared before the Commission regarding a previous legal incident prior to applying for an original salesperson's license. After review and discussion, the Commission decided not to allow Mr. Potter to apply for an original salesperson's license due to the fact that Mr. Potter is currently on probation. The Commission instructed Mr. Potter to re-appear before the Commission once he has fulfilled his legal obligations to the State regarding his legal incident.

9:15 a.m. – MICHAEL GIANGARRA appeared before the Commission to explain a “yes” answer to question #8 on his salesperson’s application. After review and discussion, the Commission denied Mr. Giangarra’s application for licensure based on the fact that Mr. Giangarra’s previous legal incident is pending before the State. The Commission instructed Mr. Giangarra to re-appear before the Commission for consideration once his previous legal incident is no longer pending.

9:40 a.m. – FRANK TRULL appeared before the Commission to discuss a previous legal incident, which was tabled by the Commission at its November 16, 2004 meeting for further review. After review and discussion of police reports submitted by Mr. Trull, the Commission decided not to allow Mr. Trull to apply for a salesperson’s license. Commissioner Ikawa abstained from the decision. The Commission informed Mr. Trull that he can apply for his salesperson’s license upon annulment of his previous record.

III. DISCUSSION

WILLIAM OLSON of Bryan Cave submitted a request for an opinion from the Commission as to whether clients and employees of Bryan Cave, who lease units and collect rent at the property are exempt under RSA 331-A:4, I. After review and discussion, the Commission decided to table its decision and refer the matter to Commissioner Stephen for an opinion.

ERICA SCHMEIZER of Elderly Housing Development & Operations Corporation submitted a request for an opinion from the Commission as to whether its business, a non-profit corporation which manages properties for senior citizens and person with disabilities, falls under the exemptions of RSA 331-A:4. All personnel are employees, and are employees of the property. After review and discussion, the Commission decided to table its decision and refer the matter to Commissioner Stephen for an opinion.

IV. OTHER BUSINESS

1. Tuesday, January 18, 2005, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2004-017**

Evaluator: Commissioner LeRoy

Determination: Upon re-consideration, the Commission decided to uphold its original decision of no hearing necessary, should not be heard.

(b) **FILE NO. 2004-023**

Evaluator: Commissioner Slattery

Determination: Should be heard, hearing to be scheduled..

(c) **FILE NO. 2004-025**

Evaluator: Commissioner LeRoy

Determination: No hearing necessary, should not be heard.

(d) **FILE NO. 2004-031**

Evaluator: Commissioner Leroy

Determination: Should be heard, hearing to be scheduled.

The above determination was unanimously approved.

3. **ORDERS**

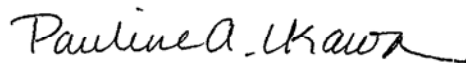
The following Order was approved by the Commission and becomes part of the official Minutes of this meeting.

FILE NO. 2003-05-08 CATHERINE DUBOIS VS ADAM GILLIS & BRIAN MOSES
(COLDWELL BANKER BRIAN MOSES REALTY)

VI. **ADJOURNMENT**

Motion by Commissioner Heath, seconded by Commissioner LeRoy to adjourn the meeting. Chairman Slattery adjourned the meeting at 11:30 a.m.

Respectfully submitted,



Pauline A. Ikawa
Acting Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION
ORDER
FILE NO. 2003-05-08

CATHERINE DUBOIS
V
ADAM GILLIS & BRIAN MOSES
(COLDWELL BANKER BRIAN MOSES REALTY)

This matter comes before the Real Estate Commission on the complaint of Catherine Dubois, alleging violations of NH RSA 331-A:26, V, XXIX, XXXVI by Adam Gillis; NH RSA 331-A:26, XXVII by Brian Moses. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Adam Gillis (hereinafter referred to as Respondent Gillis) was licensed as a New Hampshire real estate salesperson on 7/17/02, and was so licensed and associated with Coldwell Banker Brian Moses Realty at the time of the alleged violations.
2. Brian Moses (hereinafter referred to as Respondent Moses) was licensed as a New Hampshire real estate salesperson on 11/20/89 and as a real estate broker on 9/14/95, and was the principal broker of Coldwell Banker Brian Moses Realty at the time of the alleged violations.
3. Catherine Dubois (hereinafter referred to as Complainant) was the seller of a single family residential property in a transaction where Respondent Gillis was the buyer's agent.

4. Complainant testified that she granted permission through her listing agent Amy McCall for the buyers to set up their phone and fax lines the day before the closing.
5. Complainant testified that when she went to the property for one last sentimental walkthrough with her family, she was angry that the buyers were driving their vehicles over the lawn and moving into the property prior to the closing scheduled for the next day.
6. Respondent Moses testified that when he was made aware of the situation he immediately saw to it that the buyers removed their belongings from the property.
7. Respondent Moses testified they were aware that Complainant had given permission for the installation of the phone and fax lines, but there was a miscommunication with the listing agent and his office regarding the fax machine, and they were subsequently informed that Complainant was angry because the fax machine was still in the property even after the rest of the buyers' belongings had been removed.
8. Respondent Moses testified that he then sent the office manager to remove the fax machine from the property.
9. Respondent Moses testified that he totally understood and agreed with Complainant's reactions to what had transpired, and after speaking with Complainant and her listing agent, and having several disciplinary and training meetings with Respondent Gillis, he placed Respondent Gillis on a formal one year probation with his organization.

10. Respondent Moses testified that Respondent Gillis was a new agent at the time of this incident, but after two years with his organization he has never had any other problems and has learned tremendously from this experience.
11. Respondent Gillis testified, admitted, and apologized that he used poor judgment by allowing his buyers unsupervised access to Complainant's property before the closing. He indicated that he had left the buyers to install their fax machine but did not give them permission to move in before closing.
12. Complainant testified that the reason she made this complaint was because Respondent Gillis did not apologize to her at the closing and that it took him too long to write the apology letter to her.
13. Respondent Gillis testified that he was very nervous and did not apologize to Complainant at the closing because Complainant's listing agent had advised him not to say anything to Complainant for the sake of the transaction, and that he was having Respondent Moses review drafts of the apology letter before he sent it. On his own, Respondent Gillis included a gift certificate with the letter.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Allowing buyers unsupervised access to property before closing, and the associated potential for liability is a serious matter. Complainant's disappointment regarding Respondent Gillis' unprofessional conduct is well justified in this respect. The Commission respects that Respondent Gillis never attempted to deny or minimize his

mistake at any time once he realized the consequences of what he had done. Therefore, the Commission rules that Respondent Gillis did violate NH RSA 331-A:26, XXIX.

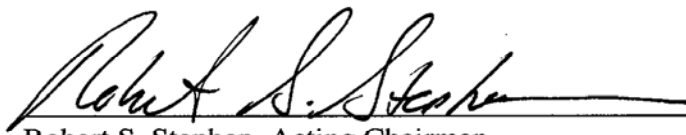
The Commission believes that Respondent Gillis acted as a young inexperienced agent, but did not have any intent to cause the problems that resulted from his actions. Therefore, the Commission rules that Respondent Gillis did not violate NH RSA 331-A:26, V or XXXVI.

The Commission feels that Respondent Moses as supervising principal broker acted professionally and appropriately when these situations were brought to his attention. Therefore, the Commission rules that Respondent Moses did not violate NH RSA 331-A:26, XXVII.

In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Adam Gillis pay a disciplinary fine to the State of New Hampshire General Fund within thirty (30) days in the amount of \$200. The Commission further orders that Adam Gillis attend a New Hampshire Real Estate Commission accredited course on ethics, in addition to his required continuing education requirements.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

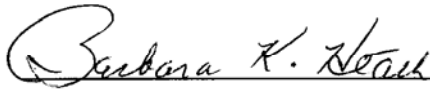
Commissioner Ikawa evaluated this case and did not take part in the hearing or decision. Commissioner Slattery was recused from this case and did not take part in the hearing or decision.



Robert S. Stephen, Acting Chairman

12-16-04

DATE



Barbara K. Heath, Commissioner

12-14-04

DATE



Nancy G. LeRoy, Commissioner

12/14/04

DATE